

ORIGINAL
RECEIVEDBefore the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 25 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Implementation of Sections of
the Cable Television Consumer
Protection and Competition
Act of 1992

MM Docket No. 93-215

Rate Regulation

COMMENTS OF E! ENTERTAINMENT TELEVISION, INC.

E! Entertainment Television, Inc. ("E!"), by its attorneys, hereby submits its comments on the Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.

E! participated in the Commission's earlier rulemakings on rate regulation, filing comments and a petition for reconsideration in MM Docket No. 92-266 (the "benchmark/price cap proceeding"). Of paramount concern to E! throughout these proceedings has been the impact of rate regulation on the ability of new and innovative programmers such as E! to obtain the financial support essential to their continued growth and development.

Like other relatively new entrants to the ranks of cable networks, E! has experienced greater difficulty in its efforts to expand cable carriage since enactment of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act"). Potential affiliates cite as the chief reasons for their hesitancy to add E! both the must-carry rules (specifically, the new demands those rules have placed on a

No. of Copies rec'd
List ABCDE

049

dwindling supply of vacant cable channels) and rate regulation. Despite the pleas of the programming community, the Commission's initial benchmark/price cap rules do not contain adequate incentives for cable systems to add new programming to existing channels or to expand channel capacity to make addition of new programming possible.

E! submits comments in this proceeding in the hope that the cost-of-service rules will contain a greater incentive for cable systems to add and develop new programming. E! believes that the Commission can accomplish this in two ways: (1) by adopting a stream-lined cost of service approach that takes costs into account to a greater extent than do the benchmarks but does not entail the administrative burdens of a classic rate proceeding; and (2) by eliminating the proposed disallowance for costs incurred in affiliate transactions.

1. The Commission should adopt a stream-lined cost of service approach

The Commission already is well aware of the burdens of conducting potentially thousands of rate reviews based on cost-of-service showings.¹ Understandably, the Commission is

¹ See Notice of Proposed Rulemaking, MM Docket No. 93-215, FCC 93-353 (released July 16, 1993) at ¶ 12; Order, MM Docket No. 92-266, FCC 93-304 (released June 15, 1993) at ¶ 2; Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-389 (released August 10, 1993) at ¶¶ 13-15.

striving to avoid these time-consuming and administratively burdensome proceedings. E! strongly supports efforts that are underway to devise a stream-lined cost-of-service approach that would enable cable systems that cannot make a fair return on investment under the benchmarks to do so without becoming embroiled in a complicated and lengthy process. Such an approach would greatly assist cable systems that currently are constrained from adding new programming or expanding channel capacity because the current benchmarks do not permit the costs to be recovered.

2. The Commission should allow cable systems to recover all costs, including an additional margin, incurred in obtaining program services, regardless of whether they are affiliated with programmers

E! previously has pointed out how members of the cable television industry came forward at a critical time to provide the needed financial support that enabled E! to grow and develop into a network that currently serves 21,000,000 subscribers with a unique format of entertainment industry news and features, including a substantial amount of original production. Indeed, cable industry financial support is responsible, to a great extent, for the tremendous increase in programming choices that exist today.²

² The variety of programming provided by cable industry-supported ventures, beginning with early cable networks such as HBO and Showtime, and including CNN, CSPAN,
(continued...)

For vertically-integrated programmers like E!³, however, other proposed new FCC rules will make it more difficult to achieve higher cable penetration.⁴ The Commission must take care that the cost-of-service regulations do not erect yet more potential obstacles to programming innovation, especially if such obstacles produce no corresponding public benefit.

The proposed cost-of-service model limits cable operators' ability to recover true costs of programming, including a margin, solely because of a degree of common ownership or control between the system operator and a programmer. As a general matter, E! is not convinced that regulations of this nature are required. As E! and others have noted in the reconsideration phase of the Commission's

²(...continued)

The Discovery Channel, Nickelodeon, Black Entertainment Television, QVC, Mind Extension University and host of others, truly have changed the way in which people use television. See, e.g., L.A. Times, July 25, 1993, at D1.

³ E! is owned by the following entities: Time Warner Cable; Comcast Cable Communications, Inc.; Cox Communications, Inc.; Continental Cablevision, Inc.; NewChannels Corp.; United Cable Television Corp.; Home Box Office, Inc.; and Warner Communications, Inc.

⁴ Under proposed new regulatory provisions implementing the Act, vertically-integrated programmers are subject to a variety of restrictions not affecting counterpart networks that do not receive cable industry funding. See, e.g., Horizontal and Vertical Ownership Limits Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-264, FCC 93-332 (released July 23, 1993) at ¶¶ 167-221.

benchmark/price cap proceeding,⁵ there is no history of this type of abuse in the cable industry. The Commission should seriously consider whether it wishes at this time to establish a regulatory program to address a problem in the absence of evidence that it exists. Declining to act at this premature point will not have an adverse impact on the public. If at any time in the future a problem arises, the Commission certainly can address it promptly and effectively.

In contrast, prematurely adopting limitations on recovery of affiliate programming costs will adversely affect the variety and quality of program services available to consumers. E! can attest to the fact that the very existence of this proposal has increased the reluctance of its investor's cable systems to add the network. In addition, the policy discourages cable companies from investing in programming services they want to carry. Either way, the policy is detrimental to continued growth and development of new programming.

3. Conclusion

For the foregoing reasons, E! urges the Commission to ensure that its regulations, both in the benchmark/price cap model and under cost-of-service, allow cable operators the opportunity to recover their full costs of program services.

⁵ See, E!'s Petition for Reconsideration, at pp. 3-5.

The Commission should avoid taking precipitous action in the absence of convincing evidence that limits and restrictions on cost recovery truly are needed at this time.

Respectfully submitted,

By: Donna C. Gregg / MKB
Donna Coleman Gregg

Michael K. Baker
Michael K. Baker

of

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

By: Christopher B. Fager / MKB
Christopher B. Fager
Senior Vice President
Business & Legal Affairs
of
E! ENTERTAINMENT

Its Attorneys
TELEVISION, INC.